U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 5690707

Date: FEB. 12, 2020

Motion on Administrative Appeals Office Decision

Form I-140, Immigrant Petition for Alien Worker (Extraordinary Ability)

The Petitioner, an orchestra concertmaster, seeks classification as an alien of extraordinary ability. *See* Immigration and Nationality Act (the Act) section 203(b)(1)(A), 8 U.S.C. § 1153(b)(1)(A). This first preference classification makes immigrant visas available to those who can demonstrate their extraordinary ability through sustained national or international acclaim and whose achievements have been recognized in their field through extensive documentation.

The Director of the Nebraska Service Center denied the petition, concluding that the record did not establish that the Petitioner had satisfied at least three of ten initial evidentiary criteria, as required. We dismissed the Petitioner's appeal from that decision. The matter is now before us on a combined motion to reopen and reconsider.

In these proceedings, it is the Petitioner's burden to establish eligibility for the requested benefit. Section 291 of the Act, 8 U.S.C. § 1361. Upon review, we will dismiss both motions.

I. MOTION REQUIREMENTS

A motion to reopen must state the new facts to be proved in the reopened proceeding and be supported by affidavits or other documentary evidence. 8 C.F.R. § 103.5(a)(2). A motion to reconsider must state the reasons for reconsideration and be supported by any pertinent precedent decisions to establish that the decision was based on an incorrect application of law or Service policy. A motion to reconsider a decision on an application or petition must, when filed, also establish that the decision was incorrect based on the evidence of record at the time of the initial decision. 8 C.F.R. § 103.5(a)(3). A motion that does not meet applicable requirements shall be dismissed. 8 C.F.R. § 103.5(a)(4).

Under the above regulations, a motion to reopen is based on documentary evidence of *new facts*, and a motion to reconsider is based on an *incorrect application of law or policy*. We may grant a motion that satisfies these requirements and demonstrates eligibility for the requested immigration benefit.

The regulation at 8 C.F.R. § 103.5(a)(1)(i) limits our authority to reopen or reconsider to instances where the Petitioner has shown "proper cause" for that action. Thus, to merit reopening or reconsideration, a petitioner must not only meet the formal filing requirements (such as submission of

a properly completed Form I-290B, Notice of Appeal or Motion, with the correct fee), but also show proper cause for granting the motion. We cannot grant a motion that does not meet applicable requirements. *See* 8 C.F.R. § 103.5(a)(4).

II. LAW

Section 203(b)(1)(A) of the Act makes immigrant visas available to aliens with extraordinary ability if:

> (i) the alien has extraordinary ability in the sciences, arts, education, business, or athletics which has been demonstrated by sustained national or international acclaim and whose achievements have been recognized in the field through extensive documentation,
>
> (ii) the alien seeks to enter the United States to continue work in the area of extraordinary ability, and
>
> (iii) the alien's entry into the United States will substantially benefit prospectively the United States.

The term "extraordinary ability" refers only to those individuals in "that small percentage who have risen to the very top of the field of endeavor." 8 C.F.R. § 204.5(h)(2). The implementing regulation at 8 C.F.R. § 204.5(h)(3) sets forth a multi-part analysis. First, a petitioner can demonstrate sustained acclaim and the recognition of his or her achievements in the field through a one-time achievement (that is, a major, internationally recognized award). If that petitioner does not submit this evidence, then they must provide sufficient qualifying documentation that meets at least three of the ten categories listed at 8 C.F.R. § 204.5(h)(3)(i)–(x) (including items such as awards, published material in certain media, and scholarly articles).

Where a petitioner meets these initial evidence requirements, we then consider the totality of the material provided in a final merits determination and assess whether the record shows sustained national or international acclaim and demonstrates that the individual is among the small percentage at the very top of the field of endeavor. *See Kazarian v. USCIS*, 596 F.3d 1115 (9th Cir. 2010).

III. ANALYSIS

The Petitioner is employed as an orchestra concertmaster with [redacted], an organization that presents dance performances with orchestral accompaniment. The Petitioner has served as the concertmaster for the [redacted] Symphony Orchestra, which comprises musicians from the various [redacted] touring companies. This orchestra performs concerts without the dancers who would otherwise be the focus of a [redacted] performance.

Because the Petitioner has not claimed a major, internationally recognized award, she must satisfy at least three of the alternate regulatory criteria at 8 C.F.R. § 204.5(h)(3)(i)–(x). The Petitioner claimed to have met four criteria, summarized below:

- (i), Lesser nationally or internationally recognized prizes or awards;
- (v), Original contributions of major significance;
- (vii), Display at artistic exhibitions or showcases; and
- (viii), Leading or critical role for distinguished organizations or establishments.

In our appellate decision, we concluded that the Petitioner had satisfied only one of the criteria, pertaining to artistic exhibitions or showcases. On motion, the Petitioner maintains that she met all four claimed criteria, and submits printouts of online materials relating to [redacted].

For the reasons set forth below, we conclude that the Petitioner has not met any of the three additional criteria.

> *Documentation of the alien's receipt of lesser nationally or internationally recognized prizes or awards for excellence in the field of endeavor.* 8 C.F.R. § 204.5(h)(3)(i)

The Petitioner won a prize at [redacted] a [redacted] contest for young musicians, in 2004. In our dismissal notice, we determined that "the Petitioner did not show that her first prize award is nationally or internationally recognized for excellence in the field," because the information and evidence that she provided "focused on the purpose and background of the competition" rather than on the recognition of the awards themselves.

On motion, the Petitioner maintains that we arbitrarily refused to give due weight to a prize from '[redacted]'s most important youth music competition." The Petitioner cites previously submitted exhibits 56-62. Those exhibits include media articles about [redacted] indicating that the event attracts over 20,000 participants each year. The scale of such an event is consistent with national recognition, but the Petitioner did not show that the awarding of the prizes attracts comparable attention.

A prize certificate names the Petitioner and two other musicians, and refers to "*a* first prize" ("*ein 1. Preis*") but the record lacks evidence of the national or international recognition of the prize, and significantly, there is no evidence of how many first prizes were awarded. Further, the submitted documentation establishes media recognition of the competition as a whole, but it does not show that the names of the prize winners are publicly announced, either by the press or on [redacted]'s own website. (If such evidence exists, the Petitioner has not included it in the record.)

Contrary to the Petitioner's contention on motion, the distinction between recognition of the *competition* and recognition of the *prize* is not arbitrary. The regulation calls for nationally or internationally recognized prizes or awards for excellence, rather than prizes or awards from internationally recognized sources. The lack of information about the prize itself is a significant deficiency, rather than a minor technicality.

The Petitioner has not established that we erred in our prior conclusion.

Evidence that the alien has performed in a leading or critical role for organizations or establishments that have a distinguished reputation. 8 C.F.R. § 204.5(h)(3)(viii)

In our appellate decision, we concluded: "While the Petitioner demonstrated that her concertmaster position is leading to the orchestra, she did not explain or show how her role is leading to [redacted] overall. . . . Moreover, the Petitioner did not establish that in her role as a concertmaster she was responsible for the success or standing of [redacted]."

On motion, the Petitioner reiterates the assertion that "the concertmaster . . . is the most important member of the orchestra." We did not dispute this assertion, but the Petitioner has not shown that the orchestra itself enjoys a distinguished reputation, rather than relying on its connection to the larger organization and its several touring dance companies.

The Petitioner's selection to lead the [redacted] Symphony Orchestra attests to her standing within the [redacted] organization, but this is a separate issue from the orchestra's reputation. The Petitioner submits copies of several newspaper articles offering unreserved praise for the orchestra, but these articles appeared in the *Epoch Times*, which is not a disinterested third party. The *Epoch Times*' coverage of [redacted] is more promotional than journalistic, as is evident from the newspaper's own statement that "Epoch Times considers [redacted] the significant cultural event of our time." As such, that newspaper's coverage is not sufficient to establish that the [redacted] Symphony Orchestra has a distinguished reputation in its own right. A *Politico* article in the record discusses the *Epoch Times*' "ties to [redacted]," the spiritual movement behind [redacted]

Information about concert venues where the orchestra has performed does not establish the distinguished reputation of the orchestra, in the absence of evidence that those venues will only permit performances by distinguished artists.

The Petitioner cites its prior submission of letters and proclamations from various government officials and entities. Without evidence to show how [redacted] obtained these materials and who chose their wording, their weight is limited. (If, for example, a particular office routinely issues such proclamations on request, and the recipients specify the wording, then such a proclamation would be more accurately described as a favor to constituents than as meaningful recognition.)

On motion, the Petitioner submits a March 2019 printout of a story that appeared in the *Gazette*, with the headline [redacted] with no author credit. The printout identifies the story as a "sponsored feature," which indicates it is, essentially, an advertisement for a [redacted] performance. Marketing and promotional materials are not generally considered to be published material for the purposes of satisfying the regulatory requirements. USCIS Policy Memorandum PM-602-0005.1, *Evaluation of Evidence Submitted with Certain Form I-140 Petitions; Revisions to the Adjudicator's Field Manual (AFM) Chapter 22.2, AFM Update AD11-14*, 7 (Dec. 22, 2010), http://www.uscis.gov/legal-resources/policy-memoranda.

A concertmaster may well perform in a leading or critical role for a given orchestra, but the record does not include independent, non-promotional evidence to show that the [redacted] Symphony Orchestra, or

any of the individual touring companies with which the Petitioner has performed, has a distinguished reputation.

Therefore, the Petitioner has not met this criterion or shown that we erred in our prior decision.

> *Evidence of the alien's original scientific, scholarly, artistic, athletic, or business-related contributions of major significance in the field.* 8 C.F.R. § 204.5(h)(3)(v)

In order to satisfy this criterion, petitioners must establish that not only have they made original contributions, but also that those contributions have been of major significance in the field. For example, a petitioner may show that the contributions have been widely implemented throughout the field, have remarkably impacted or influenced the field, or have otherwise risen to a level of major significance. The phrase "major significance" is not superfluous and, thus, it has some meaning. *See Silverman v. Eastrich Multiple Investor Fund, L.P.*, 51 F. 3d 28, 31 (3rd Cir. 1995) quoted in *APWU v. Potter*, 343 F.3d 619, 626 (2nd Cir. Sep 15, 2003).

In our appellate decision, we stated that the Petitioner had not identified specific contributions or shown those contributions to be of major significance in the field. On motion, the Petitioner cites the aforementioned *Gazette* article, but does not explain how that article establishes original contributions of major significance. The article does not refer to the Petitioner, either by name or simply as the concertmaster.

The Petitioner cites previously submitted materials about the orchestra, the implication being that, because the Petitioner is the concertmaster for the orchestra, she is largely responsible for the orchestra's success (although the Petitioner also asserts that "credit goes to more than one person"). [redacted] however, is not a self-contained field of its own. The record shows no specific contributions, reliably attributable to the Petitioner in particular, that are of major significance in the field of classical music.

IV. CONCLUSION

For the reasons discussed, the Petitioner has not shown proper cause for reopening or reconsideration and has not overcome the grounds for dismissal of the appeal. The motion to reopen and motion to reconsider will be dismissed for the above stated reasons.

ORDER: The motion to reopen is dismissed.

FURTHER ORDER: The motion to reconsider is dismissed.